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in an action wherein jurisdiction was not obtained over defendant's person.

[Ed. Note.—For other cases, see *Landlord and Tenant*, Cent. Dig. §§ 948-974; Dec. Dig. § 229.\* 2 Va.-W. Va. Enc. Dig. 83.]

Error to Law and Chancery Court of City of Roanoke.

Action by W. F. McClanahan against W. T. Bernard and others. Judgment for plaintiff, and defendants bring error. Affirmed.

*Hall & Woods*, of Roanoke, for plaintiffs in error.

*Johnston & Izard*, of Roanoke, and *John W. Carter*, of Martinsville, for defendant in error.

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GRIEF *v.* KEGLEY, Judge.

Sept. 11, 1913.

[79 S. E. 1062.]

**1. Taxation (§ 466\*)—Assessment of Mineral Lands—Review and Correction—Statute.**—Code 1904, § 437a, as amended by Acts 1910, c. 39, provides for a separate assessment of all mineral lands and for the certification thereof to the State Corporation Commission, which shall examine into the justice of the assessments and, if not assessed at its fair market value, direct the commonwealth's attorney to apply to have such assessment corrected, and that any person aggrieved by such assessment may also apply to have it corrected with the right of appeal. Code 1904, § 567, provides that any person aggrieved by an assessment may, "unless otherwise expressly provided by law," apply to the court for relief; section 568 provides for correction by the court; and section 573 that, if the auditor of public accounts shall deem the court's order erroneous, he may within one year thereafter file a petition for a rehearing. Held, that section 437a, as amended, furnished all the procedure for protecting the rights of the commonwealth in a proceeding to correct erroneous assessments of mineral lands; that section 567 excluded the correction of such assessments from the operation of that section and of sections 568, 573; and hence that the auditor of public accounts could not apply thereunder for a rehearing of a mineral land assessment.

[Ed. Note.—For other cases, see *Taxation*, Cent. Dig. §§ 829, 830; Dec. Dig. § 466.\* 13 Va.-W. Va. Enc. Dig. 105; 14 Va.-W. Va. Enc. Dig. 1002; 15 Va.-W. Va. Enc. Dig. 980.]

**2. Prohibition (§ 10\*)—Grounds—Want or Excess of Jurisdiction.**—Prohibition, while not lying to correct error, lies to prevent a court from acting where it has no jurisdiction or is exceeding its juris-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

diction; and hence a party petitioning for review and correction of an assessment on mineral lands under Code 1904, § 437a, as amended by Acts 1910, c. 39, which provides the exclusive procedure for correction thereof, was entitled to a writ of prohibition against the auditor of public accounts, whose petition to review such assessment instituted under Code 1904, § 573, was without authority.

[Ed. Note.—For other cases, see Prohibition, Cent. Dig. §§ 37-56; Dec. Dig. § 10.\* 11 Va.-W. Va. Enc. Dig. 396; 14 Va.-W. Va. Enc. Dig. 848; 15 Va.-W. Va. Enc. Dig. 831.]

Prohibition by Max Grief against Hon. Fulton Kegley, Judge of the Circuit Court of Bland County. Writ awarded.

*J. J. A. Powell*, of Wytheville, for petitioner.

*The Attorney General*, for Auditor of Public Accounts.

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MUTUAL FIRE INS. CO. *v.* TURNER.

Nov. 20, 1913.

[79 S. E. 1067.]

**1. Insurance (§ 195\*)—Fire Insurance—Mutual Companies—Notice of Assessment.**—Where the charter of a mutual assessment fire company, which was made a part of the contract between the parties, provided that each member of the association should be notified of the assessment, at least 30 days before the last day of payment, by mailing such notice to the post office address given by the member in the application for insurance, and that in case of change of address the member should in writing furnish the secretary with his new address, and the insured, who was not then living at her old address, had not notified the secretary of any change, the fact that the company sent the notice, which it had previously sent on postcards that might be forwarded, in an unsealed letter which could not be forwarded, and for that reason it was not received, will not relieve insured from a forfeiture of her policy because of nonpayment of assessments.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 427-429, 433, 434; Dec. Dig. § 195.\* 10 Va.-W. Va. Enc. Dig. 325; 14 Va.-W. Va. Enc. Dig. 758; 15 Va.-W. Va. Enc. Dig. 719.]

**2. Insurance (§ 195\*)—Fire Insurance—Waiver.**—Where the charter of a mutual fire insurance company merely required it to give notice of assessments by mail, the fact that for the past two years it had given notice by postcard is not a waiver of its right to give notice by second-class mail which cannot be forwarded as a postal.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 427-429, 433, 434; Dec. Dig. § 195.\* 7 Va.-W. Va. Enc. Dig. 803.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.